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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,842	10/16/2003	Ronald M. Rockwell	A2487-US-NP XERZ 2 01279	8491
27885	7590	11/12/2008	EXAMINER	
FAY SHARPE LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114				
			POLLACK, MELVIN H	
			ART UNIT	PAPER NUMBER
			2445	
			MAIL DATE	DELIVERY MODE
			11/12/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/686,842

Applicant(s)

ROCKWELL, RONALD M.

Examiner

MELVIN H. POLLACK

Art Unit

2445

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 6-9, 13-25 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 6-9, 13-25 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: see attached office action.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 August 2008 has been entered.

Response to Arguments

2. Applicant's arguments filed 18 August 2008 have been fully considered but they are not persuasive. An analysis of the arguments is provided below.

3. Applicant argues that claim 39's introduction of a server is sufficient to avoid the 101 rejection (P. 6). However, said server is drawn in the claims solely as a set of software modules, without a single tangible item even mentioned. The specification's definition of server does not by itself correct this deficiency. Therefore, the 101 rejection is maintained.

4. Applicant argues that Westerinen in view of Haines does not expressly disclose the usage of a device model agent (DMA) program (Pp. 6-7), which examiner has determined to have been defined in Pars. 70-71 and 137-141 of the specification. As used in the claims, however, the agent simply acts as an interface such that the printing system device may send and receive messages.

5. The 102 rejection may be fulfilled by functional equivalents to the limitation as defined by the claims and specification. Westerinen teaches such an equivalent agent (col. 10, lines 25-30).

6. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 2-4, 6-9, 13-25, and 39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are mere software per se.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-4, 6-9, 13-25 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westerinen et al. (7,065,740) in view of Haines et al. (2002/0072998).

11. Westerinen teaches a method and system (abstract) of providing a remote platform for provisioning services (col. 1, line 1 – col. 4, line 5) wherein the model is based on a shared user service lifecycle (col. 4, lines 5-10) that interacts with service customers (col. 4, lines 35) and with developers (col. 4, lines 40 – col. 5, line 10), in a modular structure described in the claim.

The system may be local or remote to the user (col. 7, lines 5-40), and includes an order processing module to perform translation and the handling of maintenance and upgrading, based on policy and entity managers (col. 7, line 40 – col. 11, line 3). A registration module performs a check on the identity (col. 11, lines 3-15), and other security features (col. 12, line 23). A service definitions module (col. 11, lines 15-40) assist in monitoring (col. 11, lines 40-55) and in the development, distribution and update of services (col. 12, lines 15-35).

12. Westerinen does not expressly disclose that the clients comprise such devices as a printer or copier, for the purposes of supplies replenishment. Haines teaches a method and system (abstract) of ordering consumables (Paras. 1-24 and 103-104) wherein a printer connected to a network (Paras. 25-35) is monitored and managed (Paras. 36-50) for automatic reordering (Paras. 73-78). At the time the invention was made, one of ordinary skill in the art would have added Haines in order to increase efficiency in maintenance tasks (Para. 6).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They regard further teachings on DMA.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN H. POLLACK whose telephone number is (571)272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melvin H Pollack/
Examiner, Art Unit 2445
07 November 2008